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20140271

October 29, 2014

Penny Miller, Clerk of the Supreme Court
600 E. Boulevard Avenue
Bismarck, ND 58505-0530

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SUPREME COURT
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

OCT 30 2014

STATE OF NORTH DAKOTA

Re: Proposed Amendments to N.D. Sup. Ct. Admin. R. 13, Judicial Referees

Dear Clerk Miller:

On behalf of the Child Support Division, I offer the following comments on proposed amendments to N.D. Sup. Ct. Admin. R. 13 (hereafter "AR 13").

We have concerns about the proposal to eliminate Section 11, which provides for a district judge's review of a referee's findings and order. Our concern is not with the elimination of Section 11, *per se*, because Section 8 still allows a party to make a timely request that a matter be removed from a referee and heard by a judge. Instead, it is the manner in which Section 8 is applied in the East Central Judicial District, coupled with the proposed elimination of Section 11, that gives us pause.

Our understanding of how Section 8 is applied in the East Central Judicial District is that once a matter has been heard by a referee, all further matters in that case will also be heard by a referee. This is true even if a party makes a request within the timeframe specified in Section 8 to have the matter heard by a judge. This application of Section 8, which is unique to the East Central Judicial District, appears to turn on the judges' interpretation of the word "proceeding" as used in Section 8.

This interpretation first came to our attention when a request by a staff attorney in our Fargo office to remove an administrative license suspension contest hearing from a referee was denied. The staff attorney made a written request for removal from the referee within three days of the notice of hearing, so the request was well within the seven-day timeframe specified in Section 8. Nevertheless, the request was denied for the reason that "proceeding" refers to the entire case and not to a motion or other event within the case. Since there had been an order to show cause hearing scheduled in the case (i.e., in the "proceeding") before a referee the year before and no request to remove that hearing from the referee was made, the court essentially ruled that the

Penny Miller
Page 2
October 29, 2014

opportunity to request removal from the referee expired at the time of the order to show cause hearing. Thus, the request to remove the referee from the license suspension contest hearing was denied as being untimely even though it was associated with a different matter and, at the time of the order to show cause hearing, the staff attorney had no reason to know that failure to request removal from the referee would have ramifications for a different matter a year later.

If Section 8 continues to be applied this way in the East Central Judicial District, the elimination of Section 11 is troubling because it will mean that a significant number of litigants will have no recourse to a ruling from a judge on a matter within the case. We do not believe this outcome to be consistent with the spirit or the original intent of AR 13.

These comments are not intended as a criticism of referees. Our staff attorneys regularly appear before referees, most often at order to show cause hearings, and we fully understand and appreciate their value to the judicial system. However, a referee is not a judge and should not be given authority to make final decisions without any review short of an appeal to the Supreme Court. We believe that all litigants should have recourse to a ruling from a district judge, either by removal of the matter from a referee under Section 8 or by review under Section 11.

Thank you for the opportunity to provide comments on the proposed amendments.

Sincerely,



Paulette Oberst
Assistant Director for Policy/Lead Attorney